

REMARKS

Reconsideration of the present application is respectfully requested. In response to the restriction requirement, Applicants elect with traverse to prosecute the claims of Group II. Therefore, Claims 5-29 and 37-38 remain for consideration in this application. Claims 1-4 and 30-36 have been canceled without prejudice or disclaimer.

Claim Rejection – 35 USC §112

The Examiner states that Claim 22 is rejected since "The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art. This rejection is respectfully traversed. The use of butadiene and isoprene in the block copolymer is disclosed in the specification on page 11, lines 18 and 19. Applicants respectfully request that this rejection be removed.

Double Patenting

Applicants have filed a terminal disclaimer with this amendment.

Rejection under 35 U.S.C. §102

The claims have been amended to further prosecution of this application. Claims 5-29 and 37-38 are novel over Grzybowski et al. (U.S. 5,711,796), Gilmore et al. (H1250), Isobe et al. (5,328,943), Uemura et al. (U.S. 4,091,134), and Hesp et al. (U.S. 5,280,064) in setting out an modified asphalt composition produced by the process comprising: 1) contacting at least one plastomer and at least one elastomer to produce a pellet; and 2) adding said pellet to asphalt in a mixing zone to produce said modified asphalt composition. Since each element of amended claims 5-29 and 37-38 are not found in the above references as required in a 102 rejection, Applicants respectfully request that the rejection be withdrawn, and the claims allowed.

Rejection under 35 U.S.C. §103

The claims have been amended to further prosecution. MPEP sec. 2142 states that to establish a prima facie case of obviousness, three criteria must be met:

- 1) "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to

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- one of ordinary skill in the art, to modify the reference or to combine reference teachings”;
- 2) “there must be a reasonable expectation of success”; and
 - 3) “the prior art reference (or references when combined) must teach or suggest all the claim limitations”.

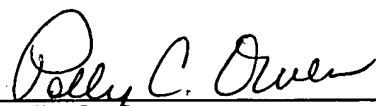
The present invention distinguishes over Kosaka et al. (U.S. 3,896,069) and Uemura et al. (U.S. 4,091,134) by setting out a modified asphalt composition produced by the process comprising: 1) contacting at least one plastomer and at least one elastomer to produce a pellet; and 2) adding said pellet to asphalt in a mixing zone to produce said modified asphalt composition.

There is no suggestion or motivation in Kosaka et al. and Uemura et al. to arrive at the present invention. Based on the foregoing comments, the Applicants respectfully request that the rejection be withdrawn, and the claims allowed.

Applicants respectfully requests that a timely Notice of Allowance be issued in this case. Should the Examiner have any questions, please contact the undersigned at (423)-229-6204.

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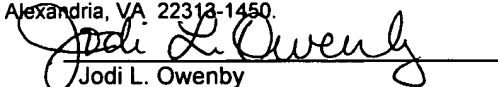
Respectfully submitted,


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11/7/05
Date

CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.


Jodi L. Owenby

November 7, 2005
Date